18 U.S.C. 842(f): UNLAWFUL ACTS
27 CFR 555.105(b)(6)(iii): DISTRIBUTION OF EXPLOSIVES TO LIMITED PERMITTEES

Distributors distributing explosive materials to holders of limited permits via common or contract carrier may verify receipt of the explosive materials by telephone, facsimile, e-mail, or other means within three business days of shipment in lieu of requiring the common or contract carrier to verify the identity of the person accepting delivery of the explosives. The distributor shall make a notation on ATF Form 5400.4 indicating whether the shipment was received and the date and time of the contact with the distributee.

ATF Rul. 2003-5

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has received questions from the explosives industry regarding the requirement under 27 CFR 555.105(b)(6)(iii) that, effective May 24, 2003, a common or contract carrier hired by a Federal explosives licensee or permittee verify the identity of the person accepting delivery on behalf of the distributee, note the type and number of the identification document, and provide this information to the distributor. The distributor is required to record this information on ATF Form 5400.4, Limited Permittee Transaction Report (LPTR).

Industry members have informed ATF that this requirement places an undue burden on common and contract carriers. Drivers are concerned that verifying the identity of persons accepting delivery of explosive materials by examining an identification document and providing the identification information to the distributor will be overly time consuming. Drivers are also concerned that they could be held personally liable for delivering explosives to persons not authorized to receive them.

ATF imposed the verification requirements of section 555.105(b)(6)(iii) to ensure that when explosive materials are sold by a distributor to a holder of a limited permit and transported by a common or contract carrier hired by the distributor, the explosive materials are delivered only to a person authorized to receive them. ATF continues to believe it is important that sellers of explosive materials verify that such materials are delivered to persons authorized to receive them. However, it was not ATF's intention to impose an undue burden on common or contract carriers.

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Section 555.22, Title 27, CFR, provides that the Director may approve an alternate method or procedure in lieu of a method or procedure specifically prescribed in the regulations when he finds that:

(1) Good cause is shown for the use of the alternate method or procedure;

(2) The alternate method or procedure is within the purpose of, and consistent with the effect intended by, the specifically prescribed method or procedure and that the alternate method or procedure is substantially equivalent to that specifically prescribed method or procedure; and

(3) The alternate method or procedure will not be contrary to any provision of law and will not result in an increase in cost to the Government or hinder the effective administration of Part 555.

ATF finds that there is good cause to authorize a variance to the provisions of section 555.105(b)(6)(iii) due to the undue burden placed on common or contract carriers by the verification requirement. Accordingly, ATF authorizes the following alternate method or procedure to the identification verification requirements of section 555.105(b)(6)(iii):

> The distributor shall, no later than three business days after shipment of the explosive materials, contact the distributee by telephone, facsimile, e-mail or any other means to ensure that the shipment has been received. The distributor shall make a notation on ATF Form 5400.4 indicating whether the shipment was received and the date and time of the contact with the distributee.

ATF finds that the above alternate method is consistent with the verification provisions of section 555.105(b)(6)(iii), because it will ensure that delivery has taken place and document the information in the distributor's records. The alternate method is not contrary to any provision of law, will not increase the costs to ATF, and will not hinder the effective administration of the regulations in 27 CFR Part 555.

Held, pursuant to 27 CFR 555.22, ATF authorizes a variance from the requirements of 27 CFR 555.105(b)(6)(iii) for Federal explosives licensees and permittees making distributions of explosive materials to holders of limited permits via common or contract carrier. As an alternate method or procedure, distributors distributing explosive materials to holders of limited permits via common or contract carrier may verify receipt of the explosive materials by telephone, facsimile, e-mail or other means within three business days of

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shipment in lieu of requiring the common or contract carrier to verify the identity of the person accepting delivery of the explosives. The distributor shall make a notation on ATF Form 5400.4 indicating whether the shipment was received and the date and time of the contact with the distributee.

Date signed: **May 23, 2003.**

RESCINDED